

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MERRITT I. ANDERSON,

CV. 05-606-ST

Petitioner,

ORDER TO AMEND

v.

STATE OF OREGON,

Respondent.

STEWART, Magistrate Judge.

On May 3, 2005, petitioner filed a document entitled "Writ of Habeas Corpus 28 U.S.C. § 2254 Removal from Oregon Ninth Circuit Court of Case No.01031377C and Appeal No.-A116479, Post Conviction Relief No.05014125M." In this one-page document, petitioner complains that he voluntarily dismissed his post-conviction case in Malheur County not knowing that the dismissal would be with prejudice.

Along with his Petition, petitioner includes a copy of his Formal Petition for Post-Conviction Relief filed on or about March 10, 2005 in which he attempts to challenge his conviction and

sentence for Violating a Court's Stalking Order. In addition, petitioner provides a document entitled "Response to Petitioner's Formal Petition for Post-Conviction Relief" in which the State "respectfully moves the Court to grant the Defendant's Petition and set the matter for further criminal proceedings." It is unclear why petitioner's post-conviction case was dismissed with prejudice when the State moved the post-conviction trial court to grant the petition and set the matter for further proceedings.

The court interprets the instant case as a 28 U.S.C. § 2254 habeas corpus challenge to his underlying state court conviction, and elects to grant petitioner's request for the appointment of counsel contained in the body of his Petition currently before this court. The Federal Public Defender, 101 S.W. Main, Suite 1700, Portland, Oregon 97204, is appointed to represent petitioner in this proceeding. See 18 U.S.C. § 3006A(a)(2)(B). The Clerk is directed to send the Federal Public Defender a copy of the file.

Petitioner's Petition for Writ of Habeas Corpus (docket #1) does not comply with Local Rule 81.1(a) which requires petitions under 28 U.S.C. § 2254 to be filed on forms provided by the court. Accordingly, with the assistance of his newly appointed attorney, petitioner is ORDERED to file an amended petition on the proper form within 45 days.

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**CONCLUSION**

Petitioner's request for the appointment of counsel contained in his Petition for Writ of Habeas Corpus (docket #1) is GRANTED. The Clerk is DIRECTED to send the Federal Public Defender a copy of the file.

With the assistance of newly appointed counsel, petitioner shall file an amended petition on a form petition which meets the requirements of Local Rule 81.1(a). Petitioner's amended petition is due within 45 days.

IT IS SO ORDERED.

DATED this 8th day of June, 2005.

/s/ Janice M. Stewart

Janice M. Stewart  
United States Magistrate Judge